

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION
310 CMR 21.00: FEDERAL SAFE DRINKING WATER ACT ASSESSMENT

Section

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21.01: Purpose and Authority

310 CMR 21.00 is intended to establish a Federal Safe Drinking Water Act Assessment to assist in providing technical compliance assistance to all suppliers of water, pursuant to the authority granted the Department by M.G.L. c. 21A, § 18A. The Assessment shall be used to assist the Division of Water Supply of the Department in providing technical compliance assistance to public water systems and in implementing the Federal Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*) and the regulations promulgated thereunder.

21.02: Definitions

As used in 310 CMR 21.00, the following words shall have the following meanings:

Advisory Committee, the Advisory Committee on Administration of the Federal Safe Drinking Water Act Assessment, appointed by the Commissioner of the Department.

Act, the Federal Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as amended from time to time.

Assessment, the Federal Safe Drinking Water Act Assessment, (or Payment in Lieu of Assessment,) authorized and established by M.G.L. c. 21A, § 18A and 310 CMR 21.00, to be paid by each end supplier.

Assessment Rate, the factor by which each 1000 gallons of drinking water withdrawn by each end supplier shall be multiplied to determine the Assessment owed to the Department by each end supplier.

Commissioner, the Commissioner of the Department of Environmental Protection.

Department, the Department of Environmental Protection.

End suppliers, suppliers of water, who are operators of all categories of "Public Water Systems" as defined in 310 CMR 22.02, and the Federal Safe Drinking Water Act, providing water directly to users.

Estimated Withdrawal Amount, the estimated gallons of water withdrawn, purchased or pumped by an unmetered end supplier, calculated as required by 310 CMR 21.04.

Metered End Suppliers, those end suppliers using master meters to measure source production, purchase and/or sales of water to other public water systems.

Receipts, monies received by the Department which are proceeds from the Assessment, including interest.

21.02: continued

Unmetered End Suppliers, those end suppliers not using master meters.

Users, all consumers, whether public, private, taxed or tax-exempt, of water provided by end suppliers.

Withdrawal Amount, the gallons of water withdrawn, purchased or pumped by a metered public water system which enters the transmission and/or distribution system. Withdrawal amount shall not include any water sold to another public water system.

21.03: Federal Safe Drinking Water Act Assessment

(1) Basis for Assessment Rate. By October 1 of each year, the Department, in consultation with the Advisory Committee, shall set the Assessment Rate at a uniform level not to exceed 1¢ per 1000 gallons of withdrawal amount and/or estimated withdrawal amount, for billing in the following fiscal year. The Assessment Rate shall be set so that receipts in the aggregate shall be reasonably related to defraying the Department's costs for monitoring, inspections, technical assistance, reporting and enforcement activities necessary to ensure compliance with the Federal Safe Drinking Water Act, 310 CMR 21.00 and 310 CMR 22.00.

(2) Notification of Assessment Rate. End suppliers shall be notified by the Department by mail of the Assessment Rate and the flat rate schedule set out in 310 CMR 21.05(2)(b) by November 1 of each year.

(3) Notification of Assessments and Payments Due. Assessments for each fiscal year shall be due after July 1 of each year as directed by the Department. At least 45 days before the date an Assessment is due, the Department shall deliver to the end supplier a written statement of the amount due. The statement shall be considered to be delivered if provided by mail or personal delivery to the correspondence address listed in the end supplier's permit or permit application, to the address of the permitted facility or project, or to any other correspondence address used by the end supplier; or by other means reasonably calculated to assure receipt by the end supplier.

(4) Collection, Interest and Penalties. Each end supplier shall remit to the Department the Assessment due that year as directed by the Department. In the event of untimely payment, interest shall be assessed on the balance due at the rate determined by the Commissioner of Administration under M.G.L. c. 29, § 29C. Interest on overdue remittances, including applicable penalties if any, shall be borne by the end supplier. The Department may impose penalties not to exceed \$5,000 per day for failure of end suppliers to remit the Assessment to the Department.

21.04: Calculation of Withdrawal Amount or Estimated Withdrawal Amount

The Withdrawal Amount for metered end suppliers shall be calculated using the measured volumes reported to the Department in the Annual Statistics Report required at 310 CMR 22.15(5). For unmetered end suppliers serving a population of at least 900 persons the Estimated Withdrawal Amount shall be calculated using the following formula:

Population Served, as reported to the Division in the Annual Statistical Report, multiplied by the average number of gallons of water used per person per day, as determined by the Department, multiplied by the number of days in that year, or for seasonal systems, the number of days the system operated that year = Estimated Withdrawal Amount.

21.05: Calculation of the Assessment

(1) For metered end suppliers, the Assessment shall be calculated by multiplying the Withdrawal Amount by the Assessment Rate.

21.05: continued

- (2) For unmetered end suppliers the Assessment shall be calculated as follows:
 - (a) for unmetered end suppliers which serve a population of 900 persons or more, by multiplying the Estimated Withdrawal Amount by the Assessment Rate;
 - (b) for unmetered end suppliers which serve a population of less than 900 persons, the Assessment shall equal a flat rate set by the Department, in consultation with the advisory committee, for the following categories based on the population served by the system.
 1. Suppliers serving 25-100 persons
 2. Suppliers serving 101-200 persons
 3. Suppliers serving 201-899 persons
- (3) The Department shall encourage universal master metering in order to accurately quantify the amount of water which passes through each distribution system and to fairly apportion the assessment among users.

21.06: Collection By End Suppliers

- (1) Amounts payable as Assessments and administrative costs of end suppliers related to the Assessment shall be recovered to the maximum practical extent from charges to users. End suppliers may recover from users administrative costs relating to the Assessment, in an amount not to exceed 5% of the annual Assessment for that system. Interest on overdue remittances, including applicable penalties, shall be borne by the end suppliers.
- (2) To the maximum extent practicable, the Assessment shall be apportioned among users by end suppliers based on the number of gallons of water consumed, or the estimated number of gallons consumed by each user.
- (3) Each end supplier shall have the option of determining how its invoices to users shall show such defraying amounts and shall determine the frequency of invoicing.
- (4) 310 CMR 21.06(4) shall not apply to the manner in which investor owned end suppliers apportion and collect the Assessment from users, which shall be determined by the Department of Public Utilities in accordance with 310 CMR 21.08.

21.07: Inspection and Audit

All records of end suppliers, including the annual measured volume records and records of population served, shall be made available upon request to the Department at any reasonable time for inspection. For at least six years from each Assessment period each end supplier shall maintain, preserve, and make available for inspection and audit all records relating to the Assessment.

21.08: Jurisdiction of The Department of Public Utilities Unaffected

The Department of Public Utilities shall determine the manner in which investor-owned end suppliers apportion and collect amounts necessary to defray the Assessment and applicable administrative costs. Nothing in 310 CMR 21.00 shall limit the authority of the Department of Public Utilities to rule on the propriety of any rates charged by any end supplier subject to its jurisdiction; provided that in making such a ruling the Department of Public Utilities shall consider the amount of the Assessment and, provided further, that such ruling shall not impose any condition inconsistent with the provisions or intent of M.G.L. c. 21A, § 18A, or 310 CMR 21.00. Compliance with any requirement imposed by the Department of Public Utilities shall not exempt any end supplier from the requirements of M.G.L. c. 21A, § 18A, or 310 CMR 21.00.

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21.09: Receipts from Assessments

All receipts shall be deposited in the Environmental Permitting and Compliance Assurance Fund established pursuant to M.G.L. c. 29, § 2P, and shall be used solely for the purposes described in 310 CMR 21.01. Receipts shall be separately accounted for and shall be used solely for administering the Federal Safe Drinking Water Act and furthering its purposes. Any unexpended balance shall be used to defray the amount of the Assessment in future fiscal years.

21.10: Required State Contribution

310 CMR 21.00 establishing the Assessment shall not be in effect in any fiscal year in which the department fails to provide from state funds, other than those collected under the terms of M.G.L. c. 21A, § 18A and 310 CMR 21.00, a match of 75% of the amount of the federal grant attributable to the implementation of the Federal Safe Drinking Water Act.

21.11: The Advisory Committee

The Department shall establish an Advisory Committee on Administration of the Federal Safe Drinking Water Act Assessment. Representative organizations from the categories below may nominate persons for consideration and the Commissioner shall appoint such persons to the Advisory Committee as considered desirable in accordance with 310 CMR 21.11. Members of the Advisory Committee shall serve until successors shall be appointed and qualified by the Commissioner. The Commissioner's appointees shall include one representative from each of the following categories of organizations:

- (a) a Massachusetts statewide water works non-profit association;
- (b) a New England regional water works non-profit association;
- (c) a non-profit association representing rural water systems;
- (d) a regional water works association;
- (e) a non-profit association representing investor-owned water companies;
- (f) a statewide environmental organization;
- (g) a second statewide environmental organization;
- (h) organizations representing non-community water suppliers;
- (i) the Massachusetts Municipal Association;
- (j) an organization representing industry; and
- (k) one other designee the commissioner considers desirable.

The total membership of the committee shall not exceed 11, a majority of which shall be comprised of water utility personnel. Two designated representatives who are water utility personnel shall also serve, as members of the Department's fees advisory committee established pursuant to M.G.L. c. 21A, § 18. No state employee shall be appointed to the advisory committee and no person appointed to the advisory committee shall be deemed to be a state employee for purposes of any other general or special law. Members of the Advisory Committee shall serve without compensation except for reimbursement of their direct expenses of travel from their place of abode to the regular meetings of the Advisory Committee.

21.12: Duties of the Advisory Committee

The Department shall consult with the advisory committee annually in setting the Assessment Rate, and prior to adoption of, or amendment to, 310 CMR 21.00. The Department shall review with the advisory committee the operation of the Assessment program and 310 CMR 21.00 at least quarterly. The Advisory Committee and the Department shall ensure that regular public service announcements are released to inform the public as to the requirements and costs associated with the Federal Safe Drinking Water Act. With administrative support from the department, the advisory committee shall produce an annual report on the Assessment program for the House and Senate Committees on Ways and Means and the Joint Committee on Natural Resources and Agriculture. The annual report shall also be made available to all end suppliers, and shall include an accounting of all Assessment receipts.

21.13: Federal Supremacy

In the event that the requirements of 310 CMR 21.00 conflict with applicable federal requirements pertaining to the establishment and collection of the Assessment by the Department, such federal requirements shall take precedence over any conflicting requirements of 310 CMR 21.00.

21.14: Severability

If any provision or application of any provision of 310 CMR 21.00 is held to be invalid, such invalidity shall not affect any other provisions of 310 CMR 21.00 not specifically held to be invalid.

REGULATORY AUTHORITY

310 CMR 21.00: M.G.L. c. 21A, § 18A.

